



Paper No. 24

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COPY MAILED**MAR 19 2001****OFFICE OF PETITIONS
A/C PATENTS**

In re Application of :
John M. Reno et al. :
Application No. 08/788,339 : DECISION GRANTING PETITION
Filed: January 27, 1997 :
Attorney Docket No. 019236-107 :

This is a decision on the petition filed March 7, 2001, requesting, in effect, that the above-identified application be accorded a filing date of January 27, 1997.

The application was deposited on January 27, 1997, as a divisional application under former 37 CFR 1.60¹ based on prior application No.08/122,979 filed September 16, 1993. A Continued Prosecution Application (CPA) under 37 CFR 1.53(d) was filed on March 8, 1999. The application filed under 37 CFR 1.60 on January 27, 1997, included a copy of the specification and signed oath or declaration originally filed in prior application No.08/122,979, except that pages 132 and 139 of the specification were missing. In addition, the drawings filed on January 27, 1997, were copies of the formal drawings subsequently filed in the prior application and not the drawings originally filed in prior application No. 08/122,979. Therefore, the copy of the specification and drawings deposited on January 27, 1997 is not a true copy of the specification and drawings of the prior application as required by former 37 CFR 1.60.

Unfortunately, the error in filing was not recognized and the application was processed and examined.

On July 26, 2000, an *Ex Parte Quayle* action was mailed in which the examiner informed the applicants that the specification was missing pages 132 and 139.

In view of the missing pages of specification, the application was referred to the Office of Patent Legal Administration for review.

¹ 37 CFR 1.60 was deleted from title 37 of the Code of Federal Regulation effective December 1, 1997. See Notice of Final Rule, 62 Fed. Reg. 53132 (October 10, 1997).

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In response to a telephone communication between the undersigned and applicants' attorney Mr. Richard Sharkey, the present petition was filed on March 7, 2001, requesting that the delay in submitting a true copy of the prior application be excused. The petition is properly treated under former 37 CFR 1.60(b)(4). The petition was accompanied by a true copy of pages 132 and 139 of the specification and the 22 sheets of informal drawings filed in the prior application.

Since a petition under former 37 CFR 1.60(b) has now been filed, the delay in supplying the true copy of the prior complete application will be excused.

The petition is granted.

Since the Rule 60 application filed on January 27, 1997 is now proper, the CPA filed March 8, 1999 is proper.

After mailing of this decision, the \$130.00 petition fee will be charged to counsel's deposit account No. 19-1090 as authorized in the petition.

Thereafter, the application will be forwarded to Initial Patent Examination Division for reprocessing under former 37 CFR 1.60 with a filing date of January 27, 1997, using the copy of pages 132 and 139 of the specification and the 22 sheets of drawings supplied on March 7, 2001.

The application will then be returned to Technology Center Art Unit 1644 for consideration by the examiner of the amendment filed October 2, 2000. Applicants may wish to consider filing a supplemental amendment reinserting the subject matter requested to be canceled in the amendment filed October 2, 2000, in view of the granting of the present petition.

Telephone inquiries specific to this matter should be directed to the undersigned at (703)306-5586.



Eugenia A. Jones

Legal Advisor

Office of Patent Legal Administration

Office of the Deputy Commissioner

for Patent Examination Policy